

DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548

28227

FILE: B-213842

DATE: May 15, 1984

MATTER OF: Overnite Transportation Company--
Reconsideration

DIGEST:

Where new evidence submitted by carrier establishes that seal applied to shipment at origin was the same seal broken at destination, carrier has established clear seal record, and reasonable presumption arises that no loss occurred in transit.

Overnite Transportation Company (OTC) requests reconsideration of our decision in the matter of Overnite Transportation Company, B-213842, February 8, 1984. In that decision, we affirmed our Claims Group (Claims) settlement which denied OTC's claim for reimbursement of \$3,904.08. The setoff against OTC was taken by the Department of the Air Force to satisfy a claim for Air Force property allegedly lost during shipment by OTC.

Claims concluded that a prima facie case of carrier liability was established since the government bill of lading (GBL) showed that 22 skids had been accepted by OTC for shipment and only 21 skids were delivered by OTC. These facts constituted a prima facie case of carrier liability based on the loading of a specified number of skids and shortage at delivery. See United States v. Seaboard Coastline Ry., 384 F. Supp. 1103 (1974). We found that the carrier had not rebutted the prima facie case of carrier liability established by the record.

The record showed that a seal had been applied to the vehicle at origin, but the seal number was not recorded on the one GBL copy contained in the Claims file. We noted that OTC's driver also had an opportunity to inspect the shipment at loading. He verified the count and accepted the GBL which specified 22 skids and contained no seal number. Furthermore, the record failed to show that the government requested exclusive use of the vehicle, which would require sealing of the vehicle against theft or loss and damage and the keeping of precise seal records for shipper's load and count which places on the shipper responsibility for the load and count.

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Based on this record, we found without merit OTC's contention that the Air Force was responsible for maintaining accurate seal records in this case and that OTC should not be held liable for this loss because of the Air Force's failure to keep accurate records. It was our view that the seal was placed on the vehicle for the convenience of the carrier and that the carrier was not prohibited from breaking the seal and removing the contents for transfer or consolidation. We also concluded that there was no clear seal record showing that the seal at origin was the seal removed at destination.

OTC again argues that a clear seal record was established by OTC, and that this record rebuts the prima facie case of carrier liability since the clear seal record establishes the carrier could not have tampered with the shipment in transit. Based on additional information submitted by OTC, we agree.

In this connection, OTC submits two photostat copies of the GBL for the two trailers involved in this shipment. While each copy contains blank spaces for filling in seal numbers for both trailers, each copy contains the record of only one trailer and seal number. OTC advises that where shipments involve more than one trailer, as was the case here, it is the usual practice to give photostat copies to the drivers at pickup which show the trailer number, cargo and seal record for each trailer, and that the original GBL usually is given to the last driver along with a photostat copy of the GBL showing the trailer and seal record. Thus, the photostat copies constitute the seal record here and, since our record does not contain the original GBL's and, in fact, all references in the record are to copies of the GBL, we are persuaded by OTC's explanation that the copies constituted the shipping record.

One photostat copy of the GBL shows that seal No. 792649 was applied at origin, and the Air Force concedes in its report on this claim that a receipt was issued to OTC on delivery showing the seal broken at delivery was the same seal, No. 792649. We think, under these circumstances, the carrier has established the delivery of the seals intact. Accordingly, the reasonable presumption arises that no loss occurred in transit. See Detroit St. S.L. R.R. v. United States, 105 F. Supp. 182 (N.D. Ohio, 1952). In the absence in the record of any evidence to refute this presumption, we reverse our prior decision and allow OTC's claim of

\$3,904.08. By transmittal memorandum of today, we are advising our Claims Group to issue a settlement certificate allowing the claim.

A handwritten signature in dark ink, appearing to read "Milton J. Doerlan". The signature is fluid and cursive, with a large initial "M" and a long, sweeping underline.

Acting Comptroller General
of the United States